

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1044 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- KHAGARIA

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Nitish Kumar @ Nitesh Kumar son of Sahdeo Singh, resident of village - Allouli,
P.S. - Allouli, District - Khagaria.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, Khagaria.
3. The Superintendent of Police, Khagaria.
4. The Officer-in-Charge, Allouli Police Station, District - Khagaria.
5. The Superintendent, Mahila Surakshagrih, Gaighat, Patna (Remand Home,
Gaighat
6. Sunita Devi wife of Sri Ram Chandra Prasad Singh, resident of village - Allouli,
P.O. - Allouli, P.S. - Allouli, District - Khagaria.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bharat Bhushan, Advocate
: Mr. Abhay Kumar Singh, Advocate
For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 28-10-2016

The petitioner claims himself to be the husband of one Gunjan Kumari, who is lodged in remand home at Gaighat, Patna City. Admittedly, the First Information Report (for short 'FIR') was instituted against the petitioner on the basis of the statement of one Sunita Devi under sections 363 and 364 of the Indian Penal Code. The allegation made in the FIR is that on 1.9.2015, the minor daughter of the informant, namely, Gunjan Kumari, aged about fifteen years, was forcibly abducted by the petitioner and two others.

2. It is contended by the learned counsel for the petitioner



that there is no truth behind the allegation made in the FIR. The aforesaid Gunjan Kumari, out of her own sweet will, had left her parental home on 1st September, 2015 and married with the petitioner in a temple on 5th September, 2015. An affidavit in this regard was also sworn before the Notary Public. After institution of the FIR on 7th September, 2015, the petitioner and Gunjan Kumari were recovered on 16th September, 2015. Though the petitioner was remanded to judicial custody, Gunjan Kumari was set at liberty by the court. However, the petitioner was subsequently granted bail by this Court, vide order dated 4.2.2016, passed in Cr.Misc. No. 50721 of 2015.

3. The informant Sunita Devi being aggrieved by order dated 21st September, 2015 passed by the learned Judicial Magistrate, Khagaria whereby her daughter Gunjan Kumari was set at liberty and had gone to the house of the petitioner, challenged the order by filing Cr.Revision No.111 of 2015. The said revision application was heard by the learned 2nd Additional District and Sessions Judge, Khagaria and, vide order dated 10th December, 2015, the revisional court set aside the order passed by the learned Magistrate and directed the Magistrate to first get the age of the victim Gunjan Kumari determined and then pass orders in accordance with law.

4. Thereafter, she was medically examined by the Board of Doctors and the Medical Board found her to be aged between 17-18



years on 18.9.2015. The informant being not satisfied by the determination of age made by the Medical Board filed an application before the court for determination of her age by the Juvenile Justice Board (for short 'the J.J.Board'). The court sent the victim to the J.J.Board for determination of her age. The J.J.Board, Khagaria made an enquiry into the matter. Certain witnesses were also examined during enquiry. The J.J.Board also took into consideration the school register where the victim was studying, wherein her date of birth was mentioned 5.1.2000.

5. On the basis of the entry made in the school register, the J.J.Board gave a finding that the date of birth of the victim is 5.1.2000. After determining the date of birth of the victim and declaring her to be minor, the J.J.Board sent back the matter to the court of Judicial Magistrate, Khagaria and on the basis of the findings of the J.J.Board the learned Judicial Magistrate put a question to the victim whether she was prepared to go to the house of her parents. The answer by the victim was in negative and under such circumstance, the victim was sent to the reformatory home (remand home), Gaighat, Patna City.

6. It is submitted by the learned counsel for the petitioner that the impugned order dated 30.8.2016 passed by the learned Magistrate, Khagaria is bad in law as also on facts of the case. He has

contended that the victim is major and she has willfully married the petitioner. She is carrying pregnancy of seven months and, hence, the Magistrate ought to have released her in favour of the petitioner.

7. Per contra, learned counsel for the State has submitted that there is neither any illegality nor any irregularity in the order passed by the learned Chief Judicial Magistrate, Khagaria. He has contended that the evidence led before the J.J.Board clearly established the fact that the date of birth of the victim is 5.1.2000 and, hence, her age was seventeen years on the date on which the impugned order was passed. He has further contended that the writ petition filed by the petitioner under Articles 226 of the Constitution of India is thoroughly misconceived as the victim has been sent to the reformatory home under the order of the court. If the victim is major, she could have challenged the order impugned by filing an appropriate application and if she is minor and is not willing to go to her parents home the application could not have been filed by the petitioner of the present case as he cannot claim himself to be a guardian of the victim.

8. I have heard learned counsel for the parties and perused the record. I find substance in the arguments advanced by the learned counsel for the State. The challenge to the judicial order passed by a court by filing a writ petition is thoroughly misconceived. Apparently

it is not case of illegal detention, where a writ petition would be maintainable. The daughter of the informant has been kept in the reformatory home pursuant to a judicial order passed by a court of competent jurisdiction. If the victim is major, she can challenge the order by filing an appropriate application under the provisions of the Code of Criminal Procedure.

9. Under the facts and circumstances of the case, as discussed above, this Court is of the considered opinion that an application under Article 226 of the Constitution of India cannot be maintained for the relief sought for in the present application.

10. Accordingly, the application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	